

March 25, 2011

Members
Senate Committee on Business, Labor
& Economic Affairs
Helena, MT 59620

BUSINESS & LABOR
EXHIBIT NO. 1
DATE 3-25-11
BILL NO. HB 535

Re: HB 535: Revisions to the Uniform Limited Partnership Act

Dear Senators:

I serve as the chairperson of the Legislative Committee of the Business, Estates, Trusts, Tax, and Real Property (BETTR) Section of the Montana State Bar. In September 2010, the BETTR Section began reviewing the Revised Uniform Limited Partnership Act (RULPA), for the purpose of making recommendations as to whether it should be submitted to the 2011 legislature for consideration. After discussion and many exchanges regarding its various provisions, the membership of the BETTR Section overwhelmingly approved RULPA by a vote of 47 to 5. The Board of Trustees of the State Bar of Montana also endorsed the legislation at its December 2011 meeting.

The use of limited partnerships has been significantly reduced since the late 1990s, as states (including Montana in 1993) began to recognize the limited liability company as a choice of business entity. The primary purposes behind the Bar's current support of RULPA are:

- (1) to restore limited partnerships as a viable alternative entity for business and estate planning purposes, and
- (2) to provide existing limited partnerships with the option of electing expanded liability protection for future debts and obligations.

Following is a summary of the most significant changes that would result if RULPA is adopted by the 2011 Montana legislature.

(1) Under current law, limited partners are shielded from personal liability for the debts and obligations of the partnership **but only if they are not involved in management**. In contrast, under current law members of *limited liability companies*, shareholders of *corporations*, and partners of *limited liability partnerships* are shielded from personal liability for the debts and obligations of those entities, even if they are involved in management. RULPA provides the same shield of liability to limited partners as is currently enjoyed by owners of other types of entities.

(2) Under current law, the general partner of a limited partnership is liable for the debts of the partnership. RULPA allows the limited partnership to elect to be a "*limited liability limited partnership*." If this election is made, the general partner is NOT liable for the debts of the partnership incurred AFTER such election, once again bringing LLLPs into alignment with the

laws providing limited liability protection to the managers of limited liability companies, corporations, and limited liability partnerships. Note, however, that under current law, managers of all types of entities may be personally liable for their actions if they engage in *negligent* or *wrongful* conduct.

(3) Under current law, upon the dissociation or withdrawal of a general partner or a limited partner, the limited partnership is required to pay to the withdrawing partner the "fair value" of his or her interest in the partnership "within a reasonable time after withdrawal," *unless* the partners have agreed to a deferred payment. Recognizing the financial stress that a pay-out requirement may place on a closely-held business, RULPA provides that a partner is not entitled to be paid the fair value of his or her partnership interest upon a partner's withdrawal from the partnership. Instead, the partner's interest becomes that of a transferee; as a transferee the withdrawn partner has the right to continue receiving distributions attributable to his or her interest, but has no further rights to participate in voting or management. However, the partners can change this rule by agreement, and provide for the purchase of a withdrawing partner's interest, either immediately upon withdrawal or upon a deferred basis.

(4) Under current law, the Uniform Partnership Act governs those areas not specifically addressed by the Limited Partnership Act. For example, because the current Limited Partnership Act does not specify the fiduciary duties of partners, those duties are ascertained by reference to the Uniform Partnership Act governing general partnerships. RULPA is a "stand-alone" act; it is much more comprehensive and no longer refers to the Uniform Partnership Act to fill in any gaps. That's why it's so long!

In summary, the adoption of RULPA will make the use of limited partnerships more attractive to many Montana family businesses, and offer advantages that may not be available by use of a corporation or limited liability company. To provide Montana citizens with that choice, the BETTR Section and Board of Trustees of the State Bar of Montana support enactment of RULPA.

Sincerely,



Kristen G. Juras, Chairperson

Legislative Committee

Section of Business, Estates, Trusts, Tax, and Real Property